IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO.7 OF 2006

IN

SUMMONS FOR JUDGEMENT NO.86 OF 2005

IN

SUMMARY SUIT NO.375 OF 2004

M/s.A.Himanshu and Co. ..Review Petitioners

Vs.

M/s.B.V.Jewels and Ors. ..Respondents

Mr.Rajani Iyer a/w Tanu Mehta - Tiwari i/b Halai and Co. for the petitioners

Mr.K.H.Mody a/w D.D.Madan i/b S.Pathak & Co. for the respondents

CORAM : S.U.KAMDAR, J
DATED : 4TH MAY, 2006

P.C.:

1. The present petition is filed for a review of an order dt.24.10.05 as permitted by the Apex Court by an order dt.6.1.06. The main contention on which review petition is filed is that order

dt.24.10.05 was obtained by the defendants by making false statement on oath in para 24 of Summons for Judgment where it has been interalia stated as under:

> "I deny that Mr.Jigar R.Gondalia was authorised to accept the alleged goods on behalf of the defendants as in sought to be insinuated. Without prejudice to the aforesaid, I say that if the defendants wanted to purchase the diamonds from the plaintiffs, the defendants would not have accepted the goods on approval basis and that also allegedly against the alleged issuance of the cheques. So far as I am aware one Mr.Jigar Ramesh Gondalia is carrying on business as free lance agent/broCker in the diamond market. I say that defendants have not employed any person named Jigar B. and/or Jigar Ramesh Gondalia as is sought to be insinuated."

2. In the review petition, the petitioners have stated that subsequent to passing of the order dt.24.10.05, on enquiries being made with the SEEPZ authorities, they have obtained certain documents which unequivocally discloses that Jigar Gondalia was infact an employee of the defendant company. In support of the aforesaid, reliance is placed on a letter dt.9.7.04 being Ex.B1 issued by defendant themselves describing Jigar Gondalia as employee of

the said factory to the Security Officer for the purpose of issuance of permanent identity card for one year. At Ex.B2, the identity card is produced. At Ex.B3 also the identity card is produced. At Ex.B4 order passed by the Deputy Commissioner of Customs is produced in which also the issue as to whether Jigar Gondalia is an employee was considered. In para 7 of the said order of the Collector, it has been held as under:

> "This violation is made possible by this individual based on M/s.B.V.Jewels appointing him as their employee, getting a permanent Security Pass issued giving unlimited scope for movement inside the zone visiting this unit, for whatever reasons, in the knowledge of the unit/partners of the unit. This action of the unit violates the SEZ rules and regulations 2003, and make the goods liable for confiscation under section 111 (i) of Customs Act, 1962."

3. The learned counsel for the petitioners has by relying on the aforesaid documents contended that statement of the respondent as in para 24 of the affidavit of Suresh Kirtilal Mehta dt.4.10.05 is totally false and on the basis of aforesaid false statement, an order under review petition has

been obtained.

4. The learned counsel for the respondents has however on the other hand contended that the said Jigar Gondalia is not an employee of the respondent. It has been submitted that the passes were issued to him merely for convenience sake. In para 19(g) of the affidavit in reply to the review petition it has been stated as under.

> "(g) The said Jigar Gondalia is frequent visitor to the defendants' premises. With a view to facilitate the said Mr.Jigar Gondalia and saving the trouble for getting the daily passes issued through tedious procedure the defendants obliged the said Mr.Jigar Gondalia by writing a request letter to the SEZ authorities to issue an employee identity card without however employing him as the employee of the defendants."

5. The learned counsel for the respondents has also drawn my attention to the order dt.28.02.06 passed in Chamber Summons No.489 of 2005. In para 5 thereof, a statement is recorded that on enquiry from the respondent company that whether the petitioner has any document to show that Gondalia

was their employee, the statement was made by the learned counsel for the petitioners that they will be examining a witness who has the knowledge of whether Gondalia was the representative and/or employee of defendants or not. He has submitted that thus, in any event the triable issue arises sine petitioners themselves wants to examine the witness in the proceeding to establish the identity of Gondalia.

6. The learned counsel for the respondents has thereafter drawn my attention to additional affidavit filed by the petitioner in which the statement is annexed giving the details of identity card issued to Mr. Gondalia on the application of M/s.B.V.Jewels by the Security Officer, SEEPZ-SEZ in which it has been set out that during the period 11.1.01 to 30.4.06 from time to time the said Jigar Gondalia was holding identity card. However, the learned counsel for the respondent has contended that on 3.6.02 the identity card was issued which was valid up to 31.8.02 and thereafter identity card was issued only on 26.9.03 and that was valid till 26.3.04. Thus, he has submitted that during

February 2003 when suit transaction is supposed to have taken place the said Gondalia was not an employee.

7. The learned counsel has thereafter submitted that on 7.3.05 they have called upon the petitioner to produce the documentary evidence that the said Gondalia is an employee or not and inspite of the same they did not produce the documents including documents which are relied upon in the present review petition.

8. In my opinion, the statement which is made in para 24 of the affidavit in reply to the Summons for Judgment is unequivocally clear to the fact that the Jigar Gondalia was never employed by the respondent company and on the basis of the same they have denied their liability. This statement is ex-facie false particularly in the light of the fact that Ex.B-1 to the Review Petition which is a letter of respondent company themselves and describes the said Jigar Gondalia as employee of defendant company and on the basis of which the identity card have been obtained. Thus, in my

opinion, prima facie the order under review has been obtained by making false statement on affidavit of the respondent dt.4.10.05.

9. The contention of the learned counsel for the respondent that identify cards were obtained merely for the sake of convenience cannot be accepted, in the light of clear cut statement indicating him as an employee and designating him as an assorter in the company of the defendant. The statement that he was a broker and card is issued merely for the sake of convenience therefore, cannot be accepted. Cards are issued by SEEPZ-Authorities on the application of the respondent-company in which Jigar Gondalia has been described by them as an employee. In that light of the matter, statement contained in the said affidavit is totally false. Once I come to the conclusion that order has been obtained by making false statement on oath as a normal rule, the order which is obtained by such false representation must be set aside. In my opinion, the order under review is thus required to be quashed and set aside by granting the present review petition. I set

aside the order dt.24.10.05 and remand the summons for Judgement back for afresh hearing on its own merits and permit the petition to rely upon the documents which are produced by them in the present review petition. Review petition is made absolute accordingly. However, there shall be no order as to costs. Office to place the Summons for Judgment on the regular board on re-opening.